

Department of Justice

§ 32.28

such that he cannot perform any gainful work.

§ 32.24 PSOB Office determination.

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant. In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to—

(i) Requesting a Hearing Officer determination; or

(ii) As applicable, moving to reconsider a negative disability finding.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

§ 32.25 Prerequisite certification.

(a) Except as provided in the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraph (b) of this section, a certification from the public agency in which the public safety officer served (as of the injury date) that he was permanently and totally disabled as a direct result of a line of duty injury, and either—

(i) That he has received (or legally is entitled to receive) the maximum disability benefits (including workers' compensation) legally payable by the agency with respect to disabled public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and

tenure described in such paragraph; and

(2) A copy of—

(i) Each State, local, and federal income tax return filed by or on behalf of the public safety officer from the year before the injury date to the date of determination by the PSOB determining official; and

(ii) Any rulings made by any public agency that relate to the claimed disability.

(b) The provisions of paragraph (a)(1) of this section shall also apply with respect to every public agency that legally is authorized to pay disability benefits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete unless it—

(1) Lists every public agency (other than BJA) that legally is authorized to pay disability benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA) legally is authorized to pay disability benefits with respect to the certifying agency.

§ 32.26 Payment.

The amount payable on a claim shall be the amount payable, as of the injury date, pursuant to the Act, at 42 U.S.C. 3796(b).

§ 32.27 Motion for reconsideration of negative disability finding.

A claimant whose claim is denied in whole or in part on the ground that he has not shown that his claimed disability is total and permanent may move for reconsideration, under § 32.28, of the specific finding as to the total and permanent character of the claimed disability (in lieu of his requesting a Hearing Officer determination with respect to the same).

§ 32.28 Reconsideration of negative disability finding.

(a) Unless, for good cause shown, the Director extends the time for filing, no negative disability finding described in § 32.27 shall be reconsidered if the motion under that section is filed with the PSOB Office later than thirty-three days after the service of notice of the denial.